(1)

No. _____

Supreme Court, U.S.
FILED
AUG 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

SUPREME COURT OF THE UNITED STATES

October Term 1988

CLAIRE KELLEY, Petitioner

v.

STATE OF OHIO, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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QUESTIONS PRESENTED FOR REVIEW

I

DID THE TRIAL COURT DENY DUE PROCESS TO PETITIONER KELLEY BY REFUSING ANY MEANINGFUL CONSIDERATION OF THE CONSTITUTIONAL ISSUES SHE RAISED IN HER MOTION TO DISMISS AND RE-NEWED MOTION TO DISMISS BY LEAVING IT TO THE APPELLATE COURT TO SETTLE BECAUSE THE TRIAL COURT DECLINED TO "MAKE POLICY" IN CONSTITUTIONAL ISSUES?

II

WAS PETITIONER DENIED A FAIR TRIAL BY THE TRIAL COURT'S OVERRULING HER MOTION TO STRIKE RADAR EVIDENCE, EVEN THOUGH THE TRIAL COURT SAID IT WAS NOT THE BASIS OF HER ARREST AND THE RESULTING SURPRISE CAUSED HER TO FORGET TO CALL HER TWO WITNESSES ON RADAR OBSTRUCTION?

III

IS AN ARREST QUOTA SYSTEM AN UNFAIR

BASIS FOR ENFORCEMENT OF THE 55 MPH SPEEDING LAW?

IV

WAS IT ERROR TO ASCRIBE CREDIBILITY TO THE ARRESTING OFFICER WHEN HE GAVE CONFLICTING TESTIMONY?

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TABLE OF CONTENTS

	Pg.
QUESTIONS PRESENTED FOR REVIEW.....	1
TABLE OF AUTHORITIES.....	v
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL PROVISIONS & STATUTES.....	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING WRIT.....	21
Argument I.....	21
Argument II.....	48
Argument III.....	49
Argument IV.....	50
APPENDIX.....	52
A-1 Constitutional Provisions & Statute Law.....	53
A-2 Ohio Supreme Court Order of Denial #87-1665,Rehearing...	58
A-3 Ohio Supreme Court Order of Denial #87-1666,Rehearing...	59
A-4 Ohio Supreme CourtOrder of Dismissal, #87-1665/1666....	60
A-5 Judgment Entry from Ohio Court of Appeals-11th Dist..	61

Pg.

A-6 Opinion from Ohio Court of Appeals-11th Dist..... 62

A-7 Kelley I.D. - Front Side..... 106

A-8 Kelley I.D. - Back Side..... 107

DECLARATION OF SERVICE..... 109

TABLE OF AUTHORITIES

Pg.

CONSTITUTIONAL LAW

Ordinance of 1787.....2,11

Art. VI, U.S.Constitution.....2,16

1st Amend.U.S.Constitution.....2,7,17, 34,36,37, 38,42

5th Amend.U.S.Constitution.....2,7,17, 34,36, 37,42, 48,49, 50,51

9th Amend.U.S.Constitution.....2,11,15, 17,34,36, 37,42

10th Amend.U.S.Constitution.....2,10,26, 27,29

14th Amend.U.S.Constitution.....2,7,16, 17,23,26, 34,36,42, 48,49,50, 51

STATUTE LAW

23 U.S.C. 154(a) & (f)(5).....2,29,49

23 U.S.C. 154(e) & (f)(1)-(5)...13

O.R.C. 4407.02.....2,3,17, 25,35, 44

O.R.C. 4511.21(D).....2,3,16, 26

Pg.

CASE LAW

Fry v. U.S., (1975).....28
421 U.S. 542

Grand River Dam Authority v. Going, (1939) 29 F.Supp. 316.....28

Griswold v. Conn., (1965).....36,37
381 U.S. 479

Kansas City So. R.Ry Co v. Anderson, (1914) 233 U.S. 325...27

Maryland v. Wirtz, (1968).....27
392 U.S. 183

Miller v. U.S.,.....42
230 F. 486

Nashville C. & St. Louis Ry. v. Walters (1935) 294 U.S. 405.....29,30,33

Norris v. Alabama, (1935).....23,24,25
294 U.S. 587

Robb v. Connally, (1884).....23,24
111 U.S. 624

Sherar v. Cullen, (1973).....43
481 F.2d 941

Smith v. Thompson, (1930).....37
154 SE. 579

Sparf v. U.S., (1895).....47
156 U.S. 1

OTHER

Diary of John Adams.....19

Case & Comment.....20

16a Am. Jur. 2d.....26

Cleveland Plain Dealer.....31

Wigmore, Evidence.....34

Chase Trial Transcript.....19,45, 46

Declaration of Independence.....46

ABBREVIATIONS

A - Appendix

MD - Motion to Dismiss

MH - Motions Hearing (transcript)

T.Tr. - Trial Transcript

Tr. Ex. - Trial Exhibit

Ex. - Exhibit

AB - Appellate Brief

App. Op. - Appellate Opinion

NOTE

All emphasis is Petitioner's

No._____

SUPREME COURT OF THE UNITED STATES

October Term 1988

CLAIRE KELLEY, Petitioner

v.

STATE OF OHIO, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, CLAIRE KELLEY, respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Ohio, entered in this proceeding June 15, 1988.

OPINIONS BELOW

There was no Opinion from the Ohio

Supreme Court. It's Orders of Denial are included in the Appendix as A-2, A-3 & A-4.

The Opinion from the Ohio Court of Appeals for the Eleventh District, Portage County, is included herein as A-5.

JURISDICTION

The Judgment of the Ohio Supreme Court was entered on May 11, 1988.

A timely Motion for Re-hearing was denied June 15, 1988. (No time given.) This Petition for Certiorari is filed within 60 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES

The full text is set forth in the Appendix as A-1, with citations below:

U.S.CONSTITUTION: Art. VI, Amendments 1,5,9,10,14; Ordinance of 1787.

U.S.STATUTE: 23 U.S.C. 154(a),(f)(5).

OHIO STATUTES: O.R.C. 4507.02 & O.R.C. 4511.21(D)

STATEMENT OF THE CASE

Driving on the Ohio Turnpike, Sunday, October 8, 1985, Petitioner was on her way to church, in Pennsylvania, when she was arrested a few miles from the Ohio/ Penna. border for (1) allegedly speeding at 68 mph, O.R.C. 4511.21(D),[1] p.57 and (2) for operating a motor vehicle, without a valid driver's license, O.R.C. 4507.02, p.56 herein.

Petitioner had been a licensed driver with a clean record and chose not to renew her license in July 1985, because she believed that a license cannot be created out of a common right and that private use of streets and highways, is a right, not a privilege.

When asked for her license, she gave the officer an I.D. card, with her signed claim of her constitutional right to travel unimpeded, unless in-

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fn.1 - Ohio Revised Code

jury or property damage occurs, and supporting law, on the back. (p. 107)

After a half hour in custody at the Highway Patrol station, she was allowed to drive home, but not to church. It was an hour's drive during which she was followed by an officer, almost to her Turnpike exit.

At her initial appearance, Ms. KELLEY appeared specially and respectfully declined to plead, not wishing to admit the jurisdiction of the court. The court refused to plead her and was visibly angry, and threatening.

At a second appearance, the court pled her 'not guilty' to both charges.

On December 2, 1985 she filed a Motion To Suppress all radar evidence and on December 27, 1985 she filed a Motion to Dismiss both charges. A later hearing was held and both Motions were denied.

On February 28, 1986 Petitioner was

tried on the speeding charge and found guilty. She was fined $50 and costs.

On May 20, 1986 Petitioner was tried by the court (no jury) and found guilty of driving without a valid license. She was fined $500 and costs. Sentence was suspended on condition that she obtain a valid Ohio driver's license. She then moved for and was granted, a stay pending appeal.

Both convictions were appealed to the Court of Appeals For Ohio, Eleventh Appellate District. An Opinion was filed August 3, 1987 at 9:22 A.M., consolidating both cases (#1677/speeding & #1745/no valid license), and affirming judgment of the trial court, p. 61.

Said Appellate Opinion was appealed to the Ohio Supreme Court, which dismissed both cases, sua sponte, without reason or opinion. Petitioner's Motion for Re-Hearing of both cases (87-1665 & 87-1666)was denied June 15, 1988.

The federal questions sought to be reviewed here, were raised pre-trial, in the Portage County Municipal Court of first instance by: (1) a written Motion To Dismiss both charges, based upon constitutional grounds and federal statutes (2) written Motion To Suppress radar evidence (3) re-newed oral Motion To Suppress radar evidence mid-trial when Court ruled it irrelevant at speeding trial (4) oral renewal of Motion To Dismiss no driver's license charge, immediately preceding trial due to a new constitutional ground. Denials of these Motions were raised upon appeal and are contained in the Appellate Court's OPINION which lists the Assignment of Errors in both cases, ~~filed August 3, 1987 at 9:22 A.M. and~~ set forth herein, at A-6, p. 62, along with appealed trial errors.

They were raised as 14 propositions of law to the Ohio Supreme Court and

appear in Petitioner's Memorandum In Support of Jurisdiction filed in said Court, in the Index, p.i to iv, in said Memorandum, p.3 to 16 and in the Appendix p.24 and again at p.65+66 in the attached Appellate Court's Opinion.

Petitioner would add here that she raised the 1st, 5th, and 14th Amendments even prior to Municipal Court, when she presented her I.D. to the Highway Patrol Officer, at the time of her arrest, See: A-7+8 herein, at p.106+107.

These constitutional issues were dealt with as follows:

MUNICIPAL COURT - The Trial Court refused to consider any constitutional defenses or law presented by Ms. KELLEY and heard arguments on them only to enter them in the record so they could be denied and passed on to the Appellate Court who have more time and staff to "get into the constitutional areas of the issue", therefore, they were summ-

arily denied. The Trial Court's remarks appear in part, in the Motions Hearing Transcript (MHT), at p.13 & 14 as follows:

"THE COURT: ...Normally it is not the trial court's province to declare unconstitutionality. Certainly they can do it, but the trial court is following the presumption and being the settler of a dispute between parties, which is one of the primary functions of the trial court, to settle the factual matters and settle the dispute as opposed to making a policy matter.

MS.KELLEY: I understand.

THE COURT: Declaring a statute unconstitutional creates a policy issue. Most policy matters are better done by Appellate Court with all the resources that they have available in Law Clerks' research time, to better get into the constitutional areas of the issue.

I am not saying they don't do it. I'm simply saying that the constitutional questions are better raised and better handled as a general rule, in the Appellate Courts, than they are in the trial courts." MHT-p.13-14 ...

MS. KELLEY: It seems to me the law should be settled. I really feel that I should not be put at jeopardy.

THE COURT: You are at jeopardy in a trial.

MS. KELLEY:That's right;that's right.

> On an issue of law, if the issue of law cannot, in some sensible way be litigated at pre-trial, or at trial --I mean if there is no law in lower Court and you have to go to higher Court to get any law, it boggles my mind." MHT-p.18

The above remarks were quoted in both Ms. KELLEY's Opening Briefs to the Appellate Court. There was also a remark, off the record, possibly after court was adjourned at the Motions Hearing, by the Judge who explained to Petitioner, that it was not the 'policy' of the Ohio Judiciary to handle constitutional issues in lower courts.

It was the same with the Motion to Suppress, which raised a constitutional issue. Then at trial, after the radar evidence was given by the arresting Officer, while Petitioner was cross-examining him, the Trial Court interrupted and stated :

> THE COURT: The radar is not the basis of your arrest in Portage County. Tr. Trans. 2/28/86 - p.24,last line

However, the Court denied Ms. KELLEY's

Motion to Strike the radar evidence. Tr. Trans. supra, p.25, 2/28/86.

The oral,re-newed Motion to Dismiss, based on a new constitutional ground, just prior to trial #2, May 20, 1986 was also 'allowed into the record', summarily denied and/thereby relegated to the Appellate Court.

APPELLATE COURT: ~~It simply refused to consider the constitutional issues as presented, leaving some totally unaddressed while convoluting others and arguing statute law over constitutional law and in complete contradiction of U.S.Supreme Court case law cited~~.

No mention was made of Petitioner's argument that the claim of a constitutional right cannot be made into a crime, (First raised in written Motion to Dismiss p.11 and raised on appeal in Case No.1745 (no license) in Opening Brief, p.6 & 11); nor of her 10th Amend. argument

that State sovereignty is reserved as to police matters (speed limits) and that her law and arguments on this, if read, were ignored - (First raised in written Motion To Dismiss p.6 to 9 and on appeal in Case No. 1677, speeding-p.8); nor of her common law rights as to corpus delecti and mens rea, protected by the 9th Amend. and the Ordinance of 1787 Ordinance, which also declares in its sec. 14 that the following Articles "forever remain unalterable, unless by common consent..." that Article II says

> "The inhabitants of the said territory shall always be entitled to the benefits of...judicial proceedings according to the course of common law."

Corpus delecti and mens rea are required under the common law.

The Appellate Court states on p. 75 of its Opinion herein (A-6), that Petitioner said she was surprised by something the arresting officer said making her forget to call her two witnesses. This is a half truth. The record clearly states that it

was what the Trial Court said that blew her mind. After the arresting Officer testified that the radar evidence was recorded in a different County, then the Trial Court said,

> "COURT: The radar is not the basis of your arrest in Portage County. It is the pace clock not the radar." T.Trans. p.24,25 - 2/28/86

This was the first Petitioner had heard of this material fact,as it was not revealed in her request for Discovery. She moved to strike the radar evidence, the Prosecution objected. The Trial Court sustained the objection.(T.TR.p.25) This is what "surprised" her so,that she forgot to call her two witnesses to testify to their observation of the radar obstructions in the area where Ms. KELLEY's speed was allegedly clocked at 73 mph. She didn't even realize her oversight until the trial was over and she was on her way back home. The Appellate Court contends that since Ms. KELLEY

did not correct this at the trial level, before appeal, that the Appellate Court is now "precluded from reviewing the matter on appeal." (p. 76 herein, A-6)

Ms. KELLEY also raised the issue of a quota system. The arresting Officer denied knowledge of any such system (T.Tr. p.32, ln.1,2). Ms. KELLEY introduced as evidence 23 U.S.C.S. 154 (e) & (f)(1) through (5), which mandates a quota system. If enough arrests aren't made, the State loses funds.(App.Br.p.60 with Argument at p.17-18). The Appellate Court ruled that since it was put into effect by the federal government, under the commerce clause, it is not open to dispute, and that the Ohio statute, does not clearly mandate a quota system, anyhow. AB-p.__

Appellate Court convoluted Ms. KELLEY's argument that it is error to ascribe credibility to a witness who gives contradictory testimony.(p. 81 herein, A-6) Ms. KELLEY did not refer to the differ-

ence between the alleged radar clocked speed (73 mph) and the paced speed (68-70 mph). She referred to the fact that the Officer testified that he locked his radar in at 73 mph and yet checked his radar, to verify the accuracy of his 68-70 mph paced estimate. This was not possible because the radar would still have read "73", since it was locked in 73 mph and/was what Ms. KELLEY observed when she she checked it shortly after her arrest. T.TR.P.8,9,15. The Officer testified:

> "...at one point (I) even activated the radar to check the speedometer against the radar." T.TR.-p.28,(2/28/86-speeding)

How could he check a 68-70mph. pace estimate, against radar, if the radar was locked in at 73 mph.?

The Appellate Court further concluded that Ms. KELLEY's contention that she was denied due process because the Trial Court refused to 'rule' on her constitutional issues was 'without merit'

because the Trial Court's action in overruling her Motion To Dismiss was a 'ruling' and thereby her claims of unconstitutionality as to the 55 mph were put to rest by the Trial Court. The Appellate Court totally ignored her claims of constitutional rights, to which she was entitled to substance in the Trial Court's ruling, not mere 'form'. See: A-6 at p.68,69 & 82, 83.

The overruling of her claimed constitutional rights, by the Trial Court with said Court's admission that it would not actually consider them, before she even argued them to the Court and would leave them to the Appellate Court to pass upon, was not addressed in the Appellate Opinion. Nor was her right of 'free passage' under her common law rights secured in the Ninth Amendment, discussed by the Appellate Court. Said right is also secured by the Ordinance of 1787, which, in 1789 was incorpora-

ted into Article VI of the U.S.Constitution. Motion To Dismiss,p.4,5 also App. in #1745 p.7,8. Brief #1677,/The Appellate Court held that the statute (O.R.C.4511.21(D)) didn't contain any such element as a demand for a corpus delecti.(p. 90 , herein A- 6) Constitutional law was completely ignored. ~~Because the Trial Court did 'rule' by overruling her Motion To Dismiss, the Appellate Court held her argument,that she was denied due process of law,to be without merit, in both cases.p. & herein~~.

Ms. KELLEY wrote a 2 page letter and affidavit /to the Ohio Registrar of Motor Vehicles, against licensing stating her position/and the law in support, including the 14th Amend., U.S.Const. in 1982 (Ex. 7 - Motion To Dismiss-p.29) There was no indication whatever from the response by Staff Attorney, W.W.Holmes, that Petitioner was wrong.(Ex.8 - Motion To Dismiss - p.32), therefore when her

license expired in July 1985, she decided not to renew it. Petitioner believes that failure of the Staff Attorney to NOTICE Ms. KELLEY that she was wrong,was a denial of due process. The Appellate Court impermissably /broadened Ms. KELLEY's argument to include everybody. It held:

> "Further, we know of no constitutional, statutory, or common law duty on the part of the state to notify members of the public individually, that certain conduct on their part will subject them to sanction. Hence we hold this statute (4507.02-licensing) to be constitutional in this regard." p. 89 herein - A- 6 .

Petitioner's argument did not address the constitutionality of said statute, but a denial of due process,from the Motor Vehicle Bureau itself, when contacted by her.

In answer to Petitioner's argument that driving is a fundamental constitutional right, based upon 1st, 5th, 9th & 14th Amendments the Appellate Court responded with an argument which blurs the line between private use and public use,

failing to differentiate between the two. p.97 herein (A-6).

Ms. KELLEY ~~was on her way to church and~~ was prevented from going to church, as a letter by her minister showed. (Motion To Dismiss p.28 - Ex.6)

The Appellate Court cited the denial to a minister of a license which he needed in his work and equated that the right to deny, implied the right to "penalize for failure to obtain." p.100, herein (A-6), and found the assignment of error without merit.

Lastly, in the license trial, which Petitioner had originally asked and been granted a jury trial, she was forced to waive this right when the Trial Court made it very clear to her that the jury could only judge the fact, not the law and that if she wanted to argue the law she would have to have a Court Trial, which she did.

Immediately preceding the Court Trial, Ms. KELLEY orally raised and pled a Renewed Motion To Dismiss For Inability to Obtain A Fair Trial based upon the ground that she did have a constitutional right to argue the law, to the jury, as well as the fact. T.Tr.-p.1 to 12 -5/20/86 She submitted to the Court as Exhibit A, an exerpt from the/Impeachment trial of U.S.Supreme Court Justice Samuel Chase, pub. by Da Capo Press, N.Y.C. in 1970. T.Tr. supra - p.7 (Trial Ex. A), The Chase transcript/was relied upon at p.12,13 of her Appellate Brief, along with other sources which / support her argument that she had a constitutional right to argue the law to the jury and they had a constitutional right to hear the law argued.

1805

Also attached to her Appellate Opening Brief were exerpts from the Diary of John Adams (p.27 - A-5) proving the intent of the Founding Fathers on jury nullifi-

tion.

> "...is it not an Absurdity to suppose that the Law would oblige them to find a Verdict according to the Direction of the Court, against their own opinion, Judgment and Conscience.
> ...
> It is not only his right but his Duty in that Case to find the Verdict according to his own best understanding, Judgment and Conscience, tho in Direct opposition to the Direction of the Court." Legal Papers of John Adams, p. 230 dated Feb. 12, 1771 T.Tr. supra - p.29

Also included in the Appellate Brief as A-6, at p.30 to 34 was an article from the Law Journal, Case & Comment, March/ April, 1975 by Russell C. Richardson, entitled, "Jury Nullification: Justice or Anarchy?" and other persuasive, pertinent law and argument, NONE of which is mentioned in the Appellate Opinion, even though 3½ pages were devoted to this Assignment #3 in her Appellate Brief. Instead, the Appellate Court quoted Ohio Jurisprudence 2d and a Ohio Supreme Court case from 1928 (p.104 herein, A-6) and called Petitioner arguments "provocative"

and "novel", admitted that in our early history juries may have had "greater involvement in determining the law of the case", but Ohio changed all of that, "many years ago". (p. 102-103, herein A- 6)

The Appellate Court also accused Ms. KELLEY of using quotes "out of context" but gave no examples. She does not believe she used any quotes out of context, so as to distort their meaning. (p. 103 herein)

/ Said Court then decided, that this 3d Assignment was lacking in merit.

REASONS FOR GRANTING THE WRIT

As To Argument I: State Court in conflict

The Municipal Court of first instance, declined to give any opinion as to whether federal rights were or were not denied Petitioner, rather leaving that to the Appellate Court. (See: STATEMENT OF THE CASE herein at p. 7, 8, & 9 .

But the Appellate Court never did address two of the constitutional issues

raised, convoluted others, argued statute law above constitutional law and found all her arguments either "without merit" or "not well taken". The trial Court disagreed. The Trial Court said,

> "Either way in this case/[2], the issue probably ought to go up, no matter how the Court finds." MH-1/7/86 - p.14.

The Ohio State Supreme Court dismisse- "sua sponte" A-4 herein at p. 60, indicating it did not believe there were any constitutional issues involved. But again the Municipal Court seems to have differed. Regarding the "no license" charge, it commented:

> "Well, you have made some interesting arguments and obviously you've worked very hard at the preparation of this material. I appreciate that and I'm not unsympathetic with a lot of the arguments that you have made. I think

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fn. 2 - Case R85 TRD 15065 S which included both charges in the Municipal Court.

> a lot of the things you say make good sense and it's always a pleasure to see people exercising their constitutional rights etc..." T.Tr. - 5/20/86 - p.60

The Trial Court further commented at the Motions Hearing that,

> "...some of the questions you have raised as to the no operator's license are some fairly substantial issues." MH - 1/7/86 - p.13

The State courts have appeared to settle an important question of federal law, as to Petitioner's substantive 14th Amendment right to due process in the State Court of first instance, as to the constitutional issues which she raised there, in conflict with applicable decisions of the U.S.Supreme Court. Petitioner's due process argument was raised as to both cases, on appeal, but in both Courts was deemed to be without merit. See: App. Op.herein, A-6, -p. 66 + 83, 84.

Both the Robb, and Norris cases infra, support Ms. KELLEY's claim of due process.

Petitioner argues that she was entitled to a meaningful consideration of her timely raised constitutional defenses, in the court of first instance.

> "A State court of original jurisdiction...may consistently with existing federal legislation, determine cases at law or equity, arising under the Constitution or laws of the United States, or involving rights dependent upon such constitution or laws. Upon State courts, equally with the courts of the Union rests the obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceedingbefore them." Robb v. Connolly, (1884) 111 U.S. 624,638
> Cited in App. Brief No. 1677,p.6

Then there is the Norris case, which is on point in principle, even though it deals with a different constitutional right (systematic exclusion from jury, of Defendant's racial group). The Court said:

> "That the question is one of fact does not relieve us of the duty to determine whether in truth a federal right has been denied. When a federal right has been specially set up and claimed in a state court, it is our province to inquirenot merely whether

> it was denied in express terms but also whether it was denied in substance and effect. If this requires an examination of evidence, that examination must be made. Otherwise, review by this Court would fail of its purpose in safeguarding constitutional rights." Norris v. Alabama, (1935) 294 U.S. 587, 589-90

The Appellate Court held that the overruling of Petitioner's Motion To Dismiss was "responsive" (App. Opinion A-6, p. 69 herein) and that Ms. KELLEY ,

> "...tacitly admitted...in the very language employed by her in her second Assignment of Error where she expressly states that the trial court erred in denying Ms. Kelly's motion to dismiss as to 4507.02.' " (App. Opinion supra, p. 83)

Obviously, Ms. KELLEY was referring to a denial without substance.

If it is the practice of the Ohio Judiciary to deny a meaningful hearing of constitutional issues in 'lower' courts so as to reserve the making of 'policy' for the Appellate Courts, then it would appear that denial of due process is the 'standard' of Ohio courts. (Also see:

Motions Hearing Transcript 1/7/86 at p. 11 to 15 for Petitioner's objections and Trial Court's dictum). Such 'policy' violates the Fourteenth Amendment, U.S. Constitution, under due process clause.

The six constitutional issues remaining from said Motion are:

O.R.C. 4511.21(D) - 55mph speed limit

1. The State Appellate Court has decided, and the State Supreme Court let stand, an important question of federal law,which Petitioner believes has not been settled by this Court, on the grounds raised by Petitioner.

Petitioner raised the Tenth Amendment and State sovereignty, 16a Am. Jur. 2d, sec. 360 et seq. re. State's sovereignty to determine most police matters, five U.S.Supreme Court cases with her
/arguments, two U.S.District Court cases and one N.Y.Supreme Court case also with supporting arguments.

Appellate Court's answer was,

> "Notwithstanding appellant's assertions to the contrary, the power of the federal government under the commerce clause of the United States Constitution, to enact a speed limit law, and to effect any programs to aid in the enforcement of this law, is well established and not subject to dispute." App. Op. (A-6 herein at p. 78-79)

But a statute valid as to one set of facts may be invalid as to another. Kansas City So.R.Ry. Co. v. Anderson, (1914), 233 U.S. 325.

The 55 mph limit is unconstitutional, because Congress exceeded their authority under the commerce clause and usurped power, by making an 'end run' around the Tenth Amendment, so as to accomplish indirectly what they cannot do directly.

> "This Court has never doubted that there are limits upon the power of Congress to override State sovereignty, even when exercising its otherwise plenary powers to tax or to regulate commerce which are conferred by Art. I of the Constitution." Maryland v. Wirtz, (1968) 392 U.S. 183, 196; See MD-p.7

In 1975 the U.S.Supreme Court recognized,

> "While the Tenth Amendment has been characterized as a 'truism'...(cites om.) it is not without significance. The Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system." Fry v. U.S., (1975) 421 U.S. 542, 547; from MD-p. 7

If Congress could regulate any individual activity merely by exercising the 'power of the purse', State sovereignty would be a myth! See MD-p.6 to 9. Ours is a government of limited powers and that includes the commerce clause. (Also see: App. Brief #1677-p.3 & 8)

An anology may be made, to the extent of Congress' power over the waterways.

> "It may be that all waterways untimately connect with the sea, or with other, larger waterways, that are undoubtedly used by shippers in interstate commerce, but Congress cannot exercise power over all waterways. In Grand River Dam Authority v. Going, (1939) 29 F. Supp. 316, the United States District Court for the District of Oklahoma noted that the

federal government's power over waterways stops at the tributaries of navigable streams." MD-p.8

If this and other cases cited by Petitioner properly state the law, it can be said that it is not within the power of Congress to enact boating laws that would apply to all rivers creeks and streams in the country. Neither can they do so with highways, private roads such as the Ohio Turnpike etc. This is beyond the delegated powers of Congress and is limited by the Tenth Amendment.

2. IF constitutional, then the 55 mph speed limit is now void. The Appellate Court decided this federal question in conflict with an applicable decision of this Court, Nashville C. & St. Louis Ry, infra.

Petitioner believes that 23 U.S.C.154 (a) has been rendered invalid because the conditions for which it was passed i.e.a fuel shortage, no longer existed

at the time of Ms. KELLEY's arrest. It was public knowledge, that the entire nation was in the middle of a fuel 'glut'. There was so much fuel, they were beginning to have 'storage' problems.

> "A statute valid when enacted may become invalid by change in the conditions to which it is applied." Nashville C. & St. Louis Ry. v. Walters, (1935) 294 U.S. 405,415 MD-p.3

The Appellate Court argues (A-6,p.67 herein) that because Petitioner failed to introduce,

> "...evidence that the challenged law is unrelated to the public health, safety, welfare or morals." A-6, supra.

that she has not met her burden of proving unconstitutionality. But said Court completely ignored the U.S.Supreme Court holding, about the intent of the law in the Nashville case, supra.

Further, if the 55 mph limit was passed for 'safety and health' are we to assume then, that the former Ohio speed limit of 70 mph was an endangerment to

'safety and health' for all the years it was enforced, prior to the 55 mph? If so, that would make Ohio culpable in all property damage, injuries and deaths due to contributory negligence in ever allowing a 70 mph speed limit.

Petitioner also draws this Court's attention to an article written after the Ohio speed limit was raised to 65 mph (by permission of Congress). It reads:

> "By PAULINE THOMA
> Staff Writer
>
> Contrary to predictions, the number of highway fatalities in Ohio has not increased substantially since the speed limit on rural interstate highways was boosted to 65 mph in July.
>
> One state official who had warned of more deaths was William N. Denihan, director of the Ohio Department of Highway Safety. He said statistics from the State Highway Patrol showed no change in the number of fatalities on rural interstate highways." The Plain Dealer - Cleveland Ohio - 11/15/87; See Petitioner's Me. of Juris. to Ohio Sup. Ct. at p. 65

Neither health, safety, welfare or morals had anything to do with the 55 mph. speed

limit. If 'public safety considerations' was the basis of the law, then it was irresponsible to raise the speed limit to 65 mph. Petitioner argues that this 'safety, health, etc. are false standards in this particular issue. There is no question that the purpose of the 55 mph limit was to conserve fuel. When that situation changed and a gas glut existed, the law became void but was retained, because such a speed limit proved to be very helpful in the raising of revenue. Money, not safety, was the purpose of maintaining a law for which there was no longer any purpose.

If the 55 mph limit was void, then either there was no speed limit at the time of Ms. KELLEY's arrest - or the limit reverted to the former limit of 70 mph, in which case she was deprived of her property, the $50.00 fine, unfairly, by abuse of the police power and the process of the court to enhance the treasuries

of Portage County and of Ohio. (See: MD-p.2,3)

> "The police power is subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably." Nashville, supra at p.415; See MD-p.3; AB-p.9

The enforcement of a 55 mph speed limit that was, in fact, void, was an arbitrary, unreasonable and unconstitutional exerceise, of the police power of the State.

3. The defense of no due process based upon no mens rea or corpus dececti in the speeding charge was not addressed by the Appellate Court.

Petitioner argued it in her Motion to Dismiss at p.4 & 5 and in her Appellate Brief, it was inclusive in her First Assignment of Error at p.1 & 5.

One of the original safeguards of due process in criminal cases, was the necessity of criminal intent and a corpus delecti.

"The term 'due process' cannot be

> re-defined by the State from its original meaning, simply because it finds that meaning 'inconvenient' for a victimless crime." MD-p.5

The doctrine of 'mala prohibita' could not possibly apply here because it is the result of a statute and a statute cannot overrule constitutional law. Said doctrine, violates Petitioner's unwritten right to proceed unimpeded, unless there is injury or damage to someone or their property.This right, which is inalienable, from the Sovereign of the Universe, is protected in the Ninth Amendment and /is a part of Petitioner's liberty under the Fifth and Fourteenth Amendments of the U.S.Constitution. It also infringes her First Amendment right to travel. MD-p.4. A corpus delecti requires,

> "...first the occurance of the specific kind of injury or loss; secondly, somebody's criminality as the source of the loss." 7 Wigmore, Evidence, sec.2072, 3d ed. MD-p.4

To require corpus delecti and mens rea in

some crimes and not in others, smacks of a denial of equal protection of the law. Motorists aren't given the same protection as other/criminals. alleged

Speeding laws are the only 'crimes' that profit government to a large degree. No doubt that is why there are hundreds of officers on 'traffic detail' while only very few, by comparison, are assigned to auto theft, fraud, rape, etc. which are the real crimes.

The Bill of Rights was also to protect us from some of the inequities of the common law, such as 'mala prohibita'.

O.R.C.4507.02 - No valid license.

4. The 'no due process' argument was also made in defense of this charge and Petitioner incorporates herein, the above Defense #3, to avoid repetition.

The Appellate Court did address this defense at A-6, p.89-91, herein. Also see MD-p.16-17; AB #1745 - p.7-8

Petitioner believes that the denial of a corpus delecti and mens rea as necessary components of her alleged crime, violated her unwritten common law rights under the Ninth Amendment and was in conflict with this Court's recognition of same, in Griswold v. Conn.,(1965) 381 U.S.479, in both charges, #3 and #4 herein.

5.Driving is a right, not a 'privilege'. Petitioner believes that the State Courts decided this question in conflict with applicable decisions of this Court, bearing on Petitioner's First, Fifth, Ninth and Fourteenth Amendment rights.

There is a difference between private and commercial use of the public highways. The State may indeed license such use for profit, but it may not license private parties to go about their ordinary errands and private business.

In essence, the/ State denied Petitioner has a First Amendment right to travel and/it that is also part of her 'liberty' under the Fifth Amendment to the U.S.Constitution. She believes this right is also protected by the Ninth Amendment which protects her unwritten common-law rights. Griswold, supra. (See also J. Goldberg's consenting opinion which elaborates upon unwritten rights.)

> "The right of a citizen to travel upon the public highways and to transport his property thereon, in the ordinary course of life and business, is a COMMON LAW RIGHT, which he has under his right to enjoy life and liberty, to acquire and possess property and to pursue happiness and safety.
>
> It includes the right in so doing, to use the ordinary and usual conveyancesof the day and under existing modes of travel, INCLUDES THE RIGHT to drive a horsedrawn carriage or wagon thereon, or TO OPERATE AN AUTOMOBILE thereon, for the usual and ordinary purpose of life and business. It is NOT a mere PRIVILEGE, like the privilege of moving a house in the street, or of operating a business stand in the street, or of transporting persons or property for hire along the street, which a city may permit or prohibit at will." Smith v. Thompson, (1930) 154 S.E. 579; MD-p.15

The right to travel is inherent in the First Amendment, for it is vital to the operation of those rights. Ms. KELLEY was denied the right to the free exercise of her religion because she didn't have a government 'license' to go to church.That is exactly what licensing amounts to.

To take an inalienable right, which government was established to protect, call it a 'privilege' and license it,is unconstitutional.

> "A license is essentially the granting of a special privilege to one or more persons, not enjoyed by the citizens generally, or, at least not enjoyed by a class of citizens to which the license belongs. A COMMON RIGHT is NOT THE CREATION OF A LICENSE." Adler v. Whitbeck,9 NE 672,674; 44 Ohio 539; MD-p.14; AB-p.9; See App. Op.,A- 5 ,p. _____, herein.

The public safety can be well protected by certification which does not bear the legal implications of 'licensing'. Said certification can, and should, be done

by private agencies, such as the American Automobile Assoc. (AAA) and others.

Going to church, a person's job, grocery shopping, voting, visiting friends, going to the doctor or dentist, going to a public library, to public meetings etc. are all dependent upon a 'license' from government, which can be revoked for receiving a certain number of traffic tickets according to 'government standards' which do not necessarily involve any corpus delecti, whatever. It is an awesome power. It is the right to revoke ALL of our constitutional rights. This should not be. Another way/can and must be found, to protect the public safety.

Before automobiles, we had horses. There were millions of them and they killed lots of people, but the right to ride a horse and who was capable was never licensed and the decision was left to the individual or the family, because

it was they who were liable for any damage they caused.(See AB-p.9-10; MD-p.10-11)

As matters stand now, Americans are really under nationwide 'house arrest' unless and until, they apply for and receive government permission to leave their neighborhoods via a driver's license. Neither a car, an adult or child, or even a dog can lawfully leave the home without government permission, i.e. a 'license'. Licensing is simply out of control.

> "The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment. ... In Anglo-Saxon law, that right was emerging as early as Magna Carta." Kent v. Dulles, (1954) 357 U.S. 116; MD-p.10; AB-p.9

Truly, a driver's license can form the basis of a government dossier because either a social security number or a birthdate can give the police entree to all kinds of information which should

not be in their hands. (See T.Tr.- 5/20/86 at p.53- ln.8 to p.54- ln.16;)

Even the Trial Court referred to the driver's license as an "information retrieval system" citing such a system as an aid to the police. T.Tr.- 5/20/86-p. 62, ln.18-20. Unfortunately, it can 'retrieve' more than driver performance. It is an invaluable tool in a police state. The driver's license is destructive of our privacy and an infringement upon our liberty.

There is no due process whatever, prior to confining a person to their home or/to walking distance of it, until they get a driver's license. This is a deprivation of our liberty.

6. The claim and exercise of a constitutional right, cannot be converted into a crime.MD-p.11 to 13; AB - p.1,#1,5 to 9.

Because this defense had no substantive ruling in the Municipal Court, was not specifically dealt with by the

Appellate Court, (not mentioned in the App. Op. A-6,p.62 herein) nor by the Ohio Supreme Court, Petitioner's grievance in this matter has actually not been redressed by the State Courts and therefore she believes she has been denied due process of law in this defense.

Ms. Kelley's claim and exercise of a constitutional right was converted into a crime. The Ohio Statute was given precedence over constitutional law, under which she was driving, That 'preference' violated the Fourteenth Amendment, U.S.C.

> "The claim and exercise of a constitutional right cannot be converted into a crime." Miller v. U.S., 230 F.486,489; also see: MD-p.12; AB#1745 at p.11; T.Tr.-p.45, ln.I to p.50, ln.11

Because Petitioner was driving under the protection of her constitutional rights, as to the First, Fifth, Ninth and Fourteenth Amendments of the U.S.Constitution, she was not subject to the penal-

ties of statute law. Jurisdiction could attach only upon property damage or personal injury.

> "There can be no sanction or penalty imposed upon one because of his exercise of constitutional rights." Sherar v. Cullen, (1973) 481 F.2d 946.

Both the Miller and Sherar cases were submitted to the Trial Court, in full, as Exhibits. (Ms. KELLEY's Exhibits A thru F were admitted into evidence. T.Tr.- 5/20/86 - p.57)

Ms. KELLEY was a licensed driver and did know the rules of the road. That she did not re-new her driver's 'license' in July, 1985, did not diminish her knowledge of driving. (See: A-7 & A-8 herein at p. 106 & 107).

Petitioner did not refuse to identify herself and presented her constitutional claims to the arresting officer, when she was first stopped. (See: T.Tr. 5/20/86 at p.19 to 22; MD-p.13. Also A-7 & A-8 herein, p.106 & 107)

Further, Petitioner believes that

O.R.C. 4507.02 is void for vagueness because it says in paragraph #1 that no person shall operate a motor vehicle,

> "...unless such person, upon application, has been licensed as an operator. ..."

Paragraph #2 says,

> "No person shall permit the operation of a motor vehicle upon any public or private property...knowing such operator does not have a valid license as an operator..."

#1 is written in past tense. Ms. KELLEY has been licensed. But #2 is written in present tense, "does not have..." These paragraphs are not consistent but seem almost contradictory. See MD-p.13; AB-p.11. Ms. KELLEY "has been" licensed but did not"have"a license when stopped.

RE-NEWED MOTION TO DISMISS

Defendant believes that the denial of her right to argue the law, as well as the fact to the jury, confirmed by the State courts, conflicted with the original intent of the founding fathers as to the meaning of 'due process' con-

firmed by the Chase Transcript. Tr. Ex. A. Petitioner believes that she was denied a fair trial, by jury, which she desired, but her case was one of only law, so she had no choice but to opt for a Court Trial.

Petitioner's STATEMENT OF THE CASE sets this forth in some detail. See: p. 19-21 herein.

Ms. KELLEY only wishes to add that the government itself, argued in the impeachment case of Mr. J. Chase, that it was Mr. Fried's constitutional RIGHT to argue the law to the jury and he was denied that right by Mr. J. Chase, who agreed with the government that it was Defendant Fried's constitutional right and that he would never deprive him of it. (J. Chase was acquitted)

In Petitioner's Exhibit A, a partial transcript of the Chase trial, ARTICLE I charges that J. Chase conducted himself

> "...in a manner highly arbitrary oppressive and unjust, viz.
> ...
> 2. In restricting counsel for the

> said Fries...from citing certain statutes of the United States, which they deemed illustrative of their positions, upon which they intended to rest the defence of their client:
>
> In debarring the prisoner from his CONSTITUTIONAL PRIVILEGE of addressing the jury (through his counsel) on the law, as well as on the fact...endeavoring to wrest from the jury their INDISPUTABLE RIGHT to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give: ... " Tr. Ex. A, p.1

The government further argued that to deny this constitutional right was "dangerous to our liberties", was a "disgrace of the character of the American bench, in manifest violation of law and justice", and that such a practice was "in open contempt" of the rights of juries as well as defendants. The government argued throughout, about the indisputable right of Mr. Fries to argue the law to his jury. J. Chase was acquitted because he proved he did not do this grave injustice.

When Thomas Jefferson complained in the Declaration of Independence about the colonists being deprived of certain bene-

fits of trial by jury, he was talking in part, about a defendant's right to argue the law to the jury. Due process MEANS the right to argue the law to the jury. Without this right, there is no due process. (The Appellate Court was not happy about Petitioner's arguments on this ground.) See: T.Tr.- 5/20/86 - p.1,ln.20 to p.12, ln.12;[3] AB - p.12 to 19; App. Op., A- 6 herein at p. 100-105.

If it was known and admitted in 1805, and before, that it was a constitutional right to argue the law to the jury, how could Sparf v. U.S., (1895) 156 U.S.1 amend the Constitution? Why have the state and federal judiciaries tolerated this usurpation for so long? Isn't it time for a re-consideration of the Sparf case?

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fn.3 - CORRECTION: T.Tr. for 5/20/86 - p.11 badly garbled - at ln.7 mis-spelled Judge Bazelon's name and quoted Ms. K. as saying he was not a good judge, when she said he was a good judge, even brilliant.

ARGUMENT II

At the speeding trial, Feburary 28, 1986, it was revealed for the first time that Ms. KELLEY's car was recorded by radar in one county and was 'paced' in another county. This is gone over in the STATEMENT OF THE CASE herein at p. 11-12.

Petitioner believes she was denied a fair trial on this account, in violation of her Fifth and Fourteenth Amendment right right to due process.

She was predjudiced by this because she did not properly prepare to meet the 'pacing' evidence, but concentrated rather, on the radar evidence. Ms. KELLEY had two witnesses to testify as to the multiple obstructions to the accuracy of a radar reading, but was so surprised by the Judge's statement that it wasn't the cause of her arrest and then his refusal to strike the radar evidence and testimony of the arresting officer she totally forgot to call said witnesses. She believes this denied

her
/a fair trial, denying her due process of law. 5th Am. & 14th Am., U.S.Const. See: T.Tr.- 2/28/86 - p. 25,26

In addition, the radar is a fatally flawed system, since there is no way a motorist can verify that the 'locked in speed' they see,was actually theirs. It could be left over from another motorist. It rests only on the Officer's word and if he is under a quota system, he may be tempted to cheat on a'slow'day.T.Tr.-2/28/86 - p.26.

ARGUMENT III

Petitioner believes that 23 U.S.C.154 (f)(5) mandates a quota system.(See T.Tr.-2/28/86-p.34 to 36). The Appellate Court disagrees.See App. Op. A-6 ,p 79-80 herein.

If it does mandate a quota system, it is unfair, denying due process, creating an
/incentive for false arrests, through the threat to withhold federal highway funds

if there aren't a sufficient number of 'speeders' caught. Again, this is a denial of due process by its inherent unfairness. 5th Am. & 14th Am., U.S.Const.

Coupled with the 'fatally flawed' radar system, the leeway here for false charges, in order to obtain federal funds is far too great.

ARGUMENT IV

The Highway Patrol Officer's credibility is on the line because he testified that he 'checked' his 'pace clock' which he testified was between 68 mph and 70 mph, with the radar which was locked in at 73 mph. and 73mph is the reading that Ms. Kelley observed when she asked to look at it. HOW could he check a 68-70 mph speed with a locked in speed of 73 and claim they matched?See T.Tr. -, 2/28/86 - p.28

> "I would say I probably looked down three or four times and at one point even activated the radar to check the speedometer against the radar." Officer's testimony T.Tr. supra p.28

This also goes to a denial of due process under Petitioner's Fifth and Fourteenth Amendment rights.

CONCLUSION

For these reasons, a Writ of Certiorari should issue, to review the judgment and opinion of the Ohio Court of Appeals for the Eleventh District, confirmed by the Ohio Supreme Court.

DATED: August 11, 1988.

Respectfully submitted,

Claire Kelley

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N. Olmsted, Ohio
#44070
(216) 779-9954

APPENDIX

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S.CONSTITUTION

Article VI (pertinent part only)

All...Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation. ...

1st Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for a redress of grievances.

5th Amendment (pertinent part only)

No person shall be...deprived of ...liberty or property, without due process of law; ... A-1

9th Amendment

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

10th Amendment

The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people.

14th Amendment (pertinent part only)

...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of...liberty, or property, without due process of law;...

Ordinance of 1787 (pertinent part only)

§14 It is hereby ordained and declared, by the authority afore-

jurisdiction in excess of fifty-five miles per hour,...

(f)(5) (pertinent part only)

For the twelve-month period ending September 30, 1983 and for each succeeding twelve-month period thereafter, if the data submitted by a State pursuant to subsection (c) of this section for that year show the percentage of motor vehicles exceeding fifty-five miles per hour is greater than 30 per centum, the Secretary shall reduce the State's approtionment of Federal-aid highway funds under each of sections 104(b)(1), 104(b)(2) and 104(b)(6) of this title (23 USCU §104(b)(1),(2) and (6) in an aggregate amount of up to 10 per centum of the amount to be apportioned for the fiscal year ending September 30, 1985 and for each succeeding fiscal year thereafter.

said, that the following articles shall be considered as articles of compact, between the original States and the people and States in said territory, and forever remain unalterable, unless by common consent, to wit:

...

ARTICLE IV (pertinent part only)

The navigable waters leading into the Mississippi and Saint Lawrence, and the carrying places between the same, shall be common highways, and forever free...without any tax impost or duty therefore.

U.S.STATUTES

23 U.S.C. 154(a) (Pertinent part only)

National maximum speed limit - The Secretary of Transportation shall not approve any project under section 106 (23 USCS §106)in any State which has(1) a maximum speed limit on any public highway within its

OHIO STATUTES

4507.02 (pertinent part only)

License required as operator or chauffeur; prohibition against unlicensed operation on private property

No person, except those expressly exempted under sections 4507.03, 4507.04, and 4507.05 of the Revised Code shall operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this state unless such person, upon application, has been licensed as an operator or chauffeur by the registrar of motor vehicles under sections 4507.01 to 4507.39, inclusive, of the Revised Code.

No person shall permit the operation of a motor vehicle upon any public or private property used by the public for purposes of vehicular

travel or parking knowing such operator does not have a valid license, as an operator or chauffeur, issued to such operator by the registrar of motor vehicles under sections 4507.01 to 4507.39, inclusive, of the Revised Code.

4511.21 Speed limit modifications

...

(D) No person shall operate a motor vehicle, trackless trolley, or streetcar upon the streets or highways at a speed exceeding fifty-five miles per hour.

THE SUPREME COURT OF OHIO

COLUMBUS

1988 TERM

To wit: June 15, 1988

State of Ohio, Appellee,	:	Case No. 87-1665
v.	:	REHEARING ENTRY
Claire Kelley, Appellant.	:	(Portage County)

IT IS ORDERED by the Court that rehearing in this case be, and the same is hereby, denied.

THOMAS J. MOYER
Chief Justice

I, Marcia J. Mengel, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from the Journal.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, on this 15th day of June, 1988. MARCIA MENGEL CLERK

A-2

THE SUPREME COURT OF OHIO

COLUMBUS

1988 TERM

To wit: June 15, 1988

State of Ohio, Appellee,	:	Case No. 87-1666
v.	:	REHEARING ENTRY
Claire Kelley, Appellant.	:	(Portage County)

IT IS ORDERED by the Court that rehearing in this case be, and the same is hereby, denied.

THOMAS J. MOYER
Chief Justice

I, Marcia J. Mengel, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from the Journal.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, on this 15th day of June, 1988. MARCIA MENGEL CLERK

A-3

THE SUPREME COURT OF OHIO

COLUMBUS

1988 TERM

To wit: May 11, 1988

State of Ohio,
Appellee,

v.

Claire Kelley,
Appellant.

Case Nos. 87-1665
and 87-1666

E N T R Y

These causes are pending before the Court on the filing of motions for leave to appeal from the Court of Appeals for Portage County and as appeals as of right from said Court. Upon consideration thereof,

IT IS ORDERED by the Court, sua sponte, that these causes be and the same are hereby, dismissed.

COSTS: Motion Fee, $20.00, paid by Claire Kelley

COSTS: Motion Fee, $20.00, paid by Claire Kelley

A-4

THOMAS J. MOYER
Chief Justice

FILED
COURT OF APPEALS
AUG 3 9 22 AM '87
IN THE COURT OF APPEALS
DELORES REED, CLERK
ELEVENTH DISTRICT

STATE OF OHIO)
)SS.
COUNTY OF PORTAGE)

STATE OF OHIO ,

Plaintiff-Appellee

- vs -

CLAIRE KELLEY ,

Defendant-Appellant

JUDGMENT ENTRY

CASE NO. 1677/1745

For the reasons stated in the opinion of this court, it is the judgment and order of this court that the judgment of the trial court is affirmed.

DONALD R. FORD

PRESIDING JUDGE
FOR THE COURT

JR18 PG 286 A-5

FILED
COURT OF APPEALS
AUG 3 9 22 AM '87
DELORES REED
CLERK

COURT OF APPEALS

ELEVENTH DISTRICT

PORTAGE COUNTY

J U D G E S
HON. DONALD R. FORD, P.J.
HON. ROBERT E. COOK, J.
HON. JUDITH A. CHRISTLEY, J.

STATE OF OHIO,
Plaintiff-Appellee

- vs -

CLAIRE KELLEY,

Defendant-Appellant

CASE NOS. 1677 & 1745

O P I N I O N

JUL 31 1987

CHARACTER OF PROCEEDINGS:
Criminal Appeal from Portage
County Municipal Court
Case No. R 85 TRD 15065 S

JUDGMENT: AFFIRMED. A-6

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FORD, P.J.,

On October 8, 1985, defendant-appellant, Claire Kelley, was arrested for speeding, R.C. 4511.21(D), and for operating a motor vehicle without a valid driver's license, R.C. 4507.02. At her initial appearance in the Portage County Municipal Court, appellant entered a plea of not guilty to the charges.

On December 2, 1985, appellant filed a motion to suppress all evidence resulting from the use of a radar speed measuring device and, on December 27, 1985, appellant filed a motion to dismiss the charges against

her. Both of the subject motions were grounded upon various constitutional arguments advanced by appellant. A hearing was subsequently conducted on appellant's motions, at the conclusion of which the trial court overruled them.

Thereafter, on February 28, 1986, appellant was tried before the court on the speeding violation, found guilty, and fined $50.00, plus court costs. Appellant appealed the trial court's judgment in Case No. 1677. With respect to the driver's license violation, the record reflects that a bench trial commenced on the matter on May 20, 1986. Appellant was ultimately adjudged guilty of the charged offense and fined $500.00 and costs. The trial court then suspended the sentence on condition that appellant obtain a valid Ohio driver's

license. Appellant appealed this conviction in Case No. 1745. These cases were consolidated for submission to this court. The appellant presents the following assignments of error in each case.

1677

1. The municipal court erred in refusing to rule on the constitutional issues presented by Ms. Kelley's motion to dismiss thereby denying her due process of law.

2. The municipal court erred in denying Ms. Kelley's motion to suppress radar evidence.

3. Due process was denied Ms. Kelley due to the element of surprise by the court and the prosecution.

4. It is error to have a mandated quota system.

5. It is error to ascribe credibility to a witness who gives conflicting testimony.

1745

1. The municipal court erred in refusing to rule on the constitutional issues presented by Ms. Kelley's

motion to dismiss as to ORC 4507.02 thereby denying her due process of law.

2. The municipal court erred in denying Ms. Kelley's motion to dismiss as to 4507.02.

3. The municipal court erred in denying Ms. Kelley's renewed motion to dismiss for inability to obtain a fair trial, presented orally to the court immediately preceding trial.

1677

In the first assignment of error, appellant argues that the trial court erred in refusing to rule on the various constitutional arguments made by appellant with respect to the validity of the 55 m.p.h. speed limit. The assignment is without merit.

Generally, the party challenging the constitutionality of a statute bears the burden of demonstrating the alleged unconstitutionality. Here appellant had the onus of demonstrating any such infirmity with

respect to the statutory 55 m.p.h. speed limit, by introducing evidence that the challenged law is unrelated to the public health, safety, welfare, or morals. 16 Ohio Jurisprudence 3d (1979), Constitutional Law, Section 148, states:

> "It is well established that the burden of showing the unconstitutionality of a statute or ordinance is upon the one challenging its validity. This is in consequence of the general presumption in favor of the validity of legislation. The proof of unconstitutionality must be clear and beyond a reasonable doubt."

The record reflects that, prior to overruling appellant's motion to dismiss, the trial court correctly informed appellant that:

> "THE COURT: The presumption is that legislation is constitutional. You can raise the constitutional question, but the legal presumption is that any ordinance, anything that is

> passed, is presumed to be constitutional."

Appellant has not met this burden. She merely argues that since the primary underlying rationale for the 55 m.p.h. speed limit was the energy crisis of the late 1970's with emphasis on fuel conservation, which for many years has not had economic and marketing impact, R.C. 4511.21 should not be enforced. This argument, however, fails to acknowledge the public safety considerations upon which this speed limit law was based, which is clearly within the realm of valid legislative purview.

With express specificity to appellant's first assignment, an examination of the record in this case clearly manifests that the trial court's action in overruling

appellant's motion to dismiss was directly responsive to appellant's arguments dealing with her claims of unconstitutionality.

Appellant articulates the applicability of the Northwest Ordinance to buttress her constitutional violation claims regarding a lack of a showing of the corpus delecti of the traffic infringement involved here. Appellant's logic regarding the Northwest Ordinance is misplaced as will be demonstrated infra. A reading of R.C. 4511.21(D) discloses that it does not contain any element which provides that injury to property or person must occur before it is violated. Consequently, appellant's contention that the finding of guilty for speeding under this statute violates Art.II of the Northwest

Ordinance, Art.I., Section 16 of the Ohio Constitution and Fifth and Fourteenth Amendments of the United States Constitution because the state did not submit evidence and prove that the speeding act of the appellant did not injure a person or property as part of the corpus delecti is without substance.

Appellant also includes a jurisdictional argument under this assignment, which deals primarily with her constitutional claims. Her logic and analysis here is at best obscure and federal law gives rise to original jurisdiction in the United States District Court. She urges that a federal question arises under 23 U.S.C. 154(A)(7). Her litany here continues with her observation that "these joint regulatory endeavors involving both state and federal

government and federal funds give original jurisdiction to the United States District Court." She cites Maine v. Thiboutot (1980), 444 U.S. 1042, pertaining to civil rights actions, and also 28 U.S.C. 1355(A)(8) in support of this position. The record here clearly shows that the alleged speeding violation in question occurred on a public highway in the State of Ohio, which, in fact, was a portion of the Ohio Turnpike. The principle that a state may reasonably regulate the speed of motor vehicles on public highways within its boundaries is so well entrenched that this court feels it is wholly unnecessary to cite authority for this proposition. Simply stated, the trial court had jurisdiction over both the subject matter and person here.

In view of appellant's failure to

establish the alleged unconstitutionality of the continued enforcement of the 55 m.p.h. speed limit, her argument must fail.

Appellant's second assignment of error challenges the constitutionality of R.C. 4511.091, authorizing the use of radar devices. Again, however, appellant fails to meet her burden of demonstrating the purported invalidity of the challenged legislation.

While appellant directs this court's attention to Florida v. Aquilera (May 7, 1979) Dade County, the cited case is neither applicable to nor controlling of the present facts. Aquilera was a consolidation of approximately 100 cases brought by defendants challenging the use of various radar devices in Dade County, Florida. In granting the numerous motions to exclude or suppress

evidence, the trial court specifically noted that the challenged devices were being employed by law enforcement officers in the absence of any training as to the manner or method of use and any proof that the operators of these devices were qualified to do the same. Since training and experience are prerequisite to the admissibility of a radar testing device's result in Ohio, Aquilera does not have significant materiality or impact in this case. Further, appellant's position in support of this issue ignores the fact that there was other speed measuring evidence introduced by the state through the patrolman's testimony independent of the radar device employed here that would provide a separate basis for a finding of guilty. See Kirtland Hills v. Logan (1986), 21 Ohio App. 3d 67.

Again, appellant contends that there was a violation of Art.II of the Northwest Ordinance of 1787, Article I, Section 10 of the Ohio Constitution and the Fifth and Fourteenth Amendments of the United States Constitution by virtue of the creation of statutory presumption pertaining to a K-55 radar device, which is irrational and arbitrary. A reading of the statute fails to show that it contains a statutory presumption. Thus, there is no violation of the doctrine expressed in U.S. v. Tot (1943), 319 U.S. 463 of the "rational connection test."

It is pertinent to note that in an analysis as to the scientific accuracy of a moving radar device that evidence of the presence or absence of devices that may interdict its reliability is not only relevant, but

most probative. In the Aquilera tenor and that of its progeny, we observe lack of such input in the record before us, although we are aware of appellant's rationalization for a failure to produce evidence on this point which will be discussed next.

Appellant's third assignment of error claims a denial of due process, advancing that certain statements made by the arresting officer surprised appellant to the extent that she forgot to call two witnesses on her behalf. The assignment is not well taken.

While it is recognized that appellant had proceeded pro se throughout the course of lower court litigation, this court is bound by the rules of criminal and appellate procedure. Since appellant could and should have attempted to correct this

purported omission at the trial court level, but did not, this court is precluded from reviewing the matter on appeal.

4 Ohio Jurisprudence 3d (1978) 299-300, Appellate Review, Section 137, provides:

> "It is axiomatic that in an appeal the reviewing court may consider only that which was considered by the trial court and nothing more." Id. at fn. 11.

See, also, Stores Realty Co. v. Cleveland, Board of Bldg. Standards & Bldg. Appeals (1975), 41 Ohio St. 2d 41.

Appellant's fourth assignment of error is predicated on her argument that the federal government has imposed a mandated quota system on the State of Ohio, requiring state law enforcement officers to arrest a specified percentage of speed limit violators per year to insure federally

funded aid for highways. See, Section 154, Title 23, U.S. Code. The pertinent portions of the federal statute at issue are:

> "(1)* * * [I]f the data submitted by a State pursuant to subsection (e) of this section show that the percentage of motor vehicles exceeding fifty-five miles per hour is greater than 70 per centum, the Secretary shall reduce the State's apportionment of Federal-aid highway funds under each of sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title [23 USCS / 104 (b)(1), (2), and (6)* * *"
>
> (2) * * * [I]f the data submitted *** show that the percentage of motor vehicles exceeding fifty-five miles per hour is greater than 60 per centum, the Secretary shall reduce the State's apportionment of Federal-aid highway funds* * *"
> " * * *
> "(5) For the twelve-month period ending September 30, 1983, and for each succeeding twelve-month period thereafter, if the data submitted by a State pursuant to subsection (e) of this section for that year show that the percentage of motor vehicles exceeding fifty-five miles per hour is greater than 30 per centum, the Secretary shall reduce the State's apportionment of Federal-aid highway funds

under each of sections 104(b)(1), USCS 104(b)(1),(2), and (6) in an aggregate amount of up to 10 per centum of the amount to be apportioned for the fiscal year ending September 30, 1985, and for each succeeding fiscal year thereafter."

In the first instance, the record does not appear to reflect that appellant raised this issue at the trial court level, resulting in a waiver of the argument on appeal. Stores Realty, supra.

Further, and assuming arguendo, that appellant raised this issue at the proper time, appellant's objection to the purported quota system is wholly without merit. The challenged quota system was put into effect by the federal government to insure state enforcement of the 55 m.p.h. speed limit law. Notwithstanding appellant's assertions to the contrary, the power of the federal

government, under the commerce clause of the U.S. Constitution, to enact a speed limit law, and to effect any programs to aid in the enforcement of this law, is well established and not subject to dispute.

Finally, appellant has failed to demonstrate that she was prejudiced as a result of the alleged quota system. Appellant did not establish, even by allegation, that the police officer's actions in arresting her for exceeding the 55 m.p.h. law were the result of the officer's desire to secure compliance with the purported quota system.

A close examination of this statute does not support appellant's position that a literal quota system for citations is prescribed in citations and/or arrests by the federal government for the states at

the risk of monetary sanctions. Admittedly, the legislative directives call for annual reports certifying the percentage of vehicles exceeding the posted speed limit of 55 m.p.h. on public highways. However, there is no portion of this statute that provides that this certified information is to be compiled as a result of actual citations issued by state law enforcement officers, or that this is to be the exclusive method to be employed by the states to determine this information.

In view of the foregoing reasoning, appellant's fourth assignment of error is not well taken.

Appellant's final assignment of error contends that the arresting officer's testimony as to appellant's speed of travel was allegedly conflicting and, as such, was

insufficient to support her conviction. Here, the record discloses that Sergeant Veppert testified that when he first observed appellant's vehicle at the time in question she was clocked by a moving radar device at 73 m.p.h., and that when he pursued her immediately after this radar clocking, he paced her speed for approximately one mile at between sixty-eight to seventy m.p.h.. It is obvious that this testimony is not conflicting or inconsistent. It simply is testimonial matter describing different speed observations through different detection techniques at separate time intervals and places. Again, appellant fails to establish her argument in this assignment. Since the burden of demonstrating the purported error has not been met by

appellant, this assignment is also found to be without merit.

1745

Appellant's first assignment of error in this case is premised on her assertion that the trial court refused to rule on the constitutional arguments raised by appellant with respect to appellant's arrest for driving without a valid Ohio license.

The record before this court does not support appellant's contention on this issue. Rather, the transcript reflects that, prior to overruling appellant's motion to dismiss, appellant was given ample opportunity to voice her objections to the state-imposed driver's license requirement. Further, the trial court correctly informed appellant that:

> "THE COURT: The presumption is that legislation is constitutional. You can raise the constitutional question, but

> the legal presumption is that any ordinance, anything that is passed, is presumed to be constitutional."

Finally, the record demonstrates that, after considering appellant's arguments on the issues raised is appellant's motion to dismiss, the trial court determined that appellant failed to establish the alleged unconstitutionality of the driver's license requirement and overruled appellant's motion to dismiss on this ground. This point appears to be tacitly admitted by the appellant in the very language employed by her in her second assignment of error where she expressly states that the trial court "erred in denying Ms. Kelly's motion to dismiss as to 4507.02."

Since the record does not support appellant's contention in this assignment, it is determined to be

without merit.

Appellant's second assignment of error, which as we have mentioned is somewhat in conflict with her first assignment of error, contends that the trial court erred in overruling her motion to dismiss. The assignment is not well taken.

Attention is directed to the statute which forms the basis of appellant's conviction and whose constitutionality appellant new challenges.

> "No person, except those expressly exempted uner sections 4507.03, 4507.04, and 4507.05 of the Revised Code, shall operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this state unless the person has a valid license as an operator or chauffeur, which license was issued upon application by the registrar of motor vehicles under sections 4507.01 to 4507.39 of the Revised Code." R.C. 4507.02(A)(1).

Pursuant to R.C. 4507.99, violation of R.C. 4507.02 constitutes a misdemeanor of the first degree.

Appellant first challenges her conviction under the foregoing statute on the ground that she did not possess the requisite intent to violate the statute, nor did her actions in so violating it result in harm to any person or property. Appellant further challenges her conviction the basis of due process, asserting that she did not have notice that it was illegal to drive in Ohio without a license.

Contrary to appellant's arguments on the issues of notice and intent, the record demonstrates that appellant had previously been issued an operator's license but that she let it expire. In view of this prior licensing status, it is difficult to perceive how appellant can contend

that she did not know it was illegal to drive in Ohio without a valid license, or that she did not intend to violate R.C. 4507.02.

Appellant's argument regarding the fact that she was not notified by legal counsel for the Ohio Bureau of Motor Vehicles, or by anyone else who was an agent of the state, nor by any other appropriate state agency that to operate a motor vehicle in Ohio without a valid operator's license was "wrong or impermissible" is spurious. This position of appellant applies to the time sequel after the expiration of her Ohio operator's license, and when she received her citation for this alleged infraction.

Generally, it is well established that notice requirements to the public or potential offenders, with respect to a criminal statute, or one that is

an exercise under the police power, with respect to the First and Fourteenth Amendments, are aptly satisfied when the legislative enactment informs the citizen with reasonable precision what act it intends to prohibit, so that he may have a certain understandable rule of conduct and know what acts it is his duty to avoid. See, 21 American Jurisprudence 2d (1981) 130, Criminal Law, section 17. Closely integrated with this postulate is the requirement that such legislative enactments in their syntax be so clear and explicit that all persons of ordinary intelligence who are subject to their penalties will understand their provisions. State v. Kosloff Fisheries, Inc. (1960), 16 O.O. 2d 367. This rule is the fundamental proscription against language which is

improperly vague.

Applying the "plain, ordinary, and natural meaning" standard to the language contained in R.C. 4507.02, we fail to see where it does not comply with constitutional statutory notice requirements. On the contrary, it is our view that it clearly indicates the activity which it intends to prohibit, namely operating a motor vehicle in Ohio without a proper and valid operator's license. Unequivocally, a member of the public is being told not to do that. The appellant's act of fashioning her own operator's license or I.D. for display purposes after her Ohio operator's license expired cannot satisfy the dictates of this section of the code that an Ohio resident must obtain such license issued upon application by the registrar of motor vehicles. Nor is her argument that

having passed the operator's test once, the same is sufficient for life, persuasive either.

Further, we know of no constitutional, statutory, or common law duty on the part of the state to notify members of the public individually that certain conduct on their part will subject them to sanction. Hence, we hold this statute to be constitutional in this regard.

As stated previously, appellant also argues that she did not intend to violate R.C. 4507.02(A)(1), or to cause injury or damage to person and property. Again, her position on this point is misplaced in her analysis of mens rea, and it indicates a lack of understanding of the concepts of mala in se and mala prohibita. Mala prohibita is defined as follows:

> "Prohibited wrongs or offenses, acts which are made offenses by

> positive laws, and prohibited as such. Acts or omissions which are made criminal by statute but which, of themselves, are not criminal. Generally, no criminal intent or mens rea is required and the mere accomplishment of the act or omission is sufficient for criminal liability. Term is used in contrast to mala in se which are acts which are wrongs in themselves such as robbery." (Black's Law Dictionary, Fifth Edition).

No language is contained in R.C. 4507.02 that specifies any requirement of intent or culpability. Generally, the classification of acts as mala in se or mala prohibita has bearing on questions raised regarding the degree or status of intent, culpability, if any, which may be required to be established before a valid finding of guilty may be made. With regard to mala prohibita matters, it is often said that no intent may be necessary as an element of a given offense, or at best a general intent rather than a

specific one.

25 Ohio Jurisprudence 3d, Criminal Law (1981), Section 54, states, in part:

> "* * *And, while it was said that the doctrine of crime without intent applied only to a limited class of acta mala prohibita, within this limited field it was held that when an act was prohibited by statute, without including the element of knowledge or intent, the courts would not by judicial construction include such element as a necessary part of the crime. It was also held that where a statute defining an offense was silent on the question of intent, it thereby indicated the purpose of the General Assembly to make proof of a specific intent unnecessary and proof of a general intent to do the proscribed act sufficient.* * *"

Since intent or culpability is not an element under R.C. 4507.02(A)(1), it was unnecessary to prove it, even though there is sufficient evidence in the record before us to conclude that the

appellant did, in fact, intend to operate a motor vehicle in Ohio without a valid Ohio operator's license.

With respect to appellant's position that she could not be criminally convicted absent a showing of injury to another person or property, the statute in question is a valid legislative attempt to regulate and maintain public health and safety on the highway. Obviously, this statute does not contain any language that imposes any requirement that actual injury to person or property occur in order for it to be violated. Therefore, appellant's contention that the corpus delecti is not satisfied here is without substance, and we perceive no violation of the Fifth or Fourteenth Amendments here nor of

Article VI of the United States Constitution or Article I, Section 10 and 16 of the Ohio Constitution, let alone Article II of the Northwest Ordinance of 1787, which we will address infra. Pertinently, as aptly stated by the trial court, one of the underlying reasons for the licensing requirement is to insure that those individuals who are operating motor vehicles within this state are competent and capable of doing so. In view of the legislative power to enact legislation for the public health, welfare, safety, and morals, as well as the corresponding ability to enact legislation to insure compliance with the relevant law, appellant's argument on this issue must fail.

Appellant finally challenges her conviction on the ground that driving an automobile is an implied

fundamental constitutional right which cannot be infringed by the state through the requirement of a driver's license.

In support of this particular constitutional challenge, appellant relies in part on Article IV of the Northwest Ordinance:

> "The navigable waters leading into the Mississippi and Saint Lawrence, AND THE CARRYING PLACES BETWEEN THE SAME, shall be common highways, and FOREVER FREE *** without ANY tax, impost or duty therefor." (Emphasis added).

Her logic here asserts the syllogism that the operator's license fee is a tax for the right of travelling the common highways, and that the substance of this provision was made a part of Article VI of the Federal Constitution. It is true that the Northwest Ordinance holds a cherished position as a most progressive document, which had much

impact on the development and advancement of many of our basic rights and freedom. Many of its features have found continued life in other tomes. It is equally clear that the literal legal effectiveness of the ordinance concluded when Ohio become a state and adopted its own constitution which was accepted by the congress of the United States. State ex rel. Donahey v. Edmondson (1913), 89 Ohio St. 93, 101, 105. Nor are we impressed with appellant's suggestion that Ohio did not officially become a state in 1803. Therefore, we conclude that this ordinance has no direct, precedential role in this case.

Turning to her other constitutional arguments appellant states that she is not constitutionally required to obtain and possess a valid Ohio operator's

license in order to drive on the highways of this state since driving an automobile in this country is a constitutional right based on the First, Fifth, Ninth and Fourteenth Amendments.

In the first instance, appellant fails to direct this court's attention to any case law establishing that the operation of a motor vehicle on a state highway is a constitutional right that cannot be regulated by the state. On the contrary, the United States Supreme Court has stated that:

> "The use of the public highways by motor vehicles, with its consequent dangers, renders the reasonableness and necessity of regulation apparent. The univeral practice is to register ownership of automobiles and to license drivers. Any appropriate means adopted by the states to insure competence and due care on the part of its licensees and protect others using the highway is consonant with due process." Reitz v. Mealey (1941), 314 U.S. 33, 36.

In Bibb v. Navajo Freight Lines (1959), 359 U.S. 520, 523-24, the court stated:

> "The power of the State to regulate the use of its highways is broad and pervasive. We have recognized the peculiarly local nature of this subject of safety, and have upheld state statutes applicable alike to interstate and intrastate commerce, despite the fact that they may have an impact on interstate commerce *** The regulation of highways 'is akin to quarantine measures, game laws, and like local regulations of rivers, harbors, piers, and docks, with respect to which the state has exceptional scope for the exercise of its regulatory power, and which, Congress not acting, have been sustained***'"

It should be noted that the appellant has inappropriately convoluted the common-law right to travel, Smith v. Thompson (1930), 154 S.E. 579, with the privilege to operate a motor vehicle.

In Ohio, the prevailing view has been that the operation of a motor vehicle jurisprudentially has been

viewed as a privilege rather than a right. Smith v. Hayes (1955), 60 O.O. 112; Wilsch v. Bencar (1966), 7 Ohio App. 2d 165, 167, 168. The Smith case held that the state has an absolute right under its sovereign police power to control automobile traffic by regulating the circumstances under which citizens may be licensed to operate motor vehicles. It has also been held in Ohio that one of the primary purposes of a system of driver licensing laws in Ohio is to protect street users from the dangers of the conduct of incompetent drivers. Watson v. Osborne (1948), 51 Ohio Law Abs. 569. This is a legitimate compelling interest and exercise under the police power. There is certainly a rational connection between the licensing exercise and the activity to be controlled. Although it has been

held that a driver's license is an important property right itself, that does not control the outcome here, and there is no derivative conslusion from this property right to the effect that the right to drive an automobile is fundamental in the constitutional sense. Wells v. Mollay (1975), 402 F. Supp. 856, 858.

Certainly the denial of an operator's license, or its suspension, is subject to procedural due process. Panatt v. Taylor (1980), 451 U.S. 527, 540. However, this is not a viable or contested issue here since there was a court trial on the subject of operation without a license afforded.

Touching briefly on appellant's freedom of religion argument, in Bell v. Burson (1971), 407 U.S. 535, 539, the petitioner was a clergyman whose ministry required him to travel by car

to cover three rural communities. The court held that an operator may be denied a license for appropriate reasons so long as procedural due process required by the Fourteenth Amendment is observed. Surely the power to deny here is part of the power phylum to grant, withhold, or penalize for failure to obtain.

For all of the foregoing reasons, we find that R.C. 4507.02 is constitutional in its application to all facets of this case, and that this assignment of error is without merit.

The diction employed by appellant does not state succinctly the gravamen of her specific claim of error under her third assignment in this case. It is her position in this argument that she filed a motion to dismiss the citation because of her anticipation that the jury would not be permitted

to receive her arguments on what the law was and how it should apply, as well as the facts, and make conclusions on both of these subjects. In essence, her claim is that the position taken by the the trial court with respect to her jury trial request forced her to waive a jury trial and submit her case to the court alone. She urges that this emasculation of the jury role denies her a fair trial - hence due process. She also submits that the proper constitutional framework for the jury function is that it should not only be apprised of the applicable law by the trial judge, but that it should have the power to be instructed that it "can nullify the law, if, for any reason, they believe it to be unjust or unfair." She further contends in her brief:

> "The criminal trials referred to by the Ohio Constitution (Art.I, sec.10), and the U.S. Constitution (Fifth and Sixth Amendments) were trials 'per pais', that is, a trial 'by country' or trial by 'the people', where they are the judges, not a trial by government, where the court is the judge." (Emphasis in original).

Thus, she takes the position that a criminal defendant should be able to argue to a jury what the applicable law is and how it should be applied - that "no judicial fiat can alter that right." She also argues that in courts today "jurors are lied to by the court and made to believe they must take the law as the judge gives it to them."

While it may have been the practice in the earlier years of our country to have permitted juries to have greater involvement in determining the law of the case as

suggested in U.S. v. Moylan (1969), 417 F. 2d 1002, 1006, the Supreme Court of Ohio had occasion many years ago to pronounce the law as to the role of the jury and the trial judge in a jury trial in Ohio.

52 Ohio Jurisprudence 2d (1962), Trial, Section 90, at 578, states:

> "It is the exclusive province and solemn duty of the trial court to determine in every case what the law is in whatever form presented, and so advise the jury and direct the application of the law to the facts of the case at bar. An evasion of this duty is the very negation of law ***" [and cases cited therein].

Although appellant's argument under this assignment is provocative and somewhat novel, it is not pristine. This court is not unmindful that some of the references cited by appellant here are applied out of context, and included material that supports the contra position is

conveniently ignored.

We remind the appellant that it is the role of an appellate court under Ohio law to apply the law as declared by the Supreme Court of this state on a given subject. It is most evident that the Supreme Court of Ohio has had occasion to declare and redeclare the law on this topic as evidenced by the foregoing quotation and citations found in reference to it as well in Scaccuto v. State (1928), 118 Ohio St. 397, and its progeny. The rationale behind this approach is based on an extensive experience table which has as its goal the salutory aim of having a system which will provide a greater probability of insuring a consistent and fairer administration of the law, instead of leaving it to the determination by a jury on any given occasion with the spectrum of

unpredictable interpretation in view. Since a basic precept of criminal justice is the orderly, efficient, and reliable application of the law, appellant's third assignment is wholly lacking in merit.

The judgment of the trial court is affirmed in both cases.

DONALD R. FORD

PRESIDING JUDGE

COOK, J.,
CHRISTLEY, J., concur

FRONT SIDE

OHIO DRIVER

CLAIRE KELLEY
6605 SUTTON DR.
NORTH OLMSTED-OH 44070

Signature

Claire Kelley

* License Number	Restric.	Class
CRT000001	GLASSES	OPERATOR

Age	Date issued	Endorsement
40+	7/30/85	U.S.CONSTITUTION AMENDMENTS 1,5,14

Expires On	S.S.Number	Sex	Ht	Wt	Hair	Eyes
INABILITY	000 00 0000	F	5 8	140	L.Brn	BLU

*CRT - Constitutional Right

A-7

BACK SIDE

NOTICE

1. 1st. Amend.: The right to travel by any means is a constitutional right, not a state granted privilege. Kent v. Dulles, (1958) 357 U.S. 1; Slaughter-House Cases, (1873)16 Wall. 36.

2. 5th Amend.:Constitutional "liberty" embraces the right of all persons to be free from governmental interference with their movements, unless they have injured someone in their person and/or property.

3. 14th Amend.: Prohibits the deprivation of constitutional rights, by making or enforcing any state law which abridges them.

4. Any interference with said rights, can subject a person to a Civil Rights suit (42 USC 1983, 1985(3) & 1986) and/or to criminal prosecution (18 USC 241, 242.)

A-8

5. The undersigned hereby claims her above-stated rights.

Claire Kelley

No._____

SUPREME COURT OF THE UNITED STATES

October Term - 1988

CLAIRE KELLEY, Petitioner,

v.

STATE OF OHIO, Respondent

DECLARATION OF SERVICE
(28 U.S.C. 1746 (2))

I, CLAIRE KELLEY, declare as follows:

1. That my home address is 6605 Sutton Dr., N. Olmsted, Ohio - 44070;

2. That I am a citizen of the United States, over eighteen years of age;

3. That on August 11 ,1988 I timely mailed, first-class, prepaid, one copy of PETITION FOR WRIT OF CERT-IORARI TO THE SUPREME COURT OF OHIO &

to each of the following parties, by United States mail addressed as follows:

JOHN J. PLOUGH, Prosecutor
466 S. Chestnut St.
Ravenna, Ohio - 44266

CHARLES FRIED, Solicitor General
Department of Justice
Washington, D.C. - 20530

4. That Mr. FRIED is being served because 28 U.S.C. 2403(a) may be applicable;

5. That all parties required to be served have been served;

6. That there is regular communication between the place of mailing and the place so addressed;

7. I declare under penalty of perjury, that the foregoing is true and correct.

EXECUTED ON: August 11, 1988.

By Claire Kelley
CLAIRE KELLEY, In Pro Se